

MILORD & ASSOCIATES, PC
2049 Century Park East, Suite 3850
Los Angeles, CA 90067
(310) 226-7878

Milord A. Keshishian, SBN 197835
MILORD & ASSOCIATES, P.C.
2049 Century Park East, Suite 3850
Los Angeles, CA 90067
Tel: (310) 226-7878
Fax: (310) 226-7879
milord@milordlaw.com

Daniel J. Kolodziej, SBN 170595
TRYGSTAD, SCHWAB & TRYGSTAD
1880 Century Park East, Suite 1104
Los Angeles, CA 90067-1600
Tel: (310) 552-0500
Fax: (310) 552-1306
dkolodziej@trygstadlawoffice.com
Attorneys for Plaintiff
TRIGG LABORATORIES, INC.

Gary L. Sirota, SBN, 136606
Chris C. Polychron, SBN 230103
COAST LAW GROUP, LLP
1140 S. Coast Highway 101
Encinitas, CA
Tel: (760) 942-8505
Fax: (760) 942-8515
gsirota@coastlawgroup.com
cpolychron@coastlawgroup.com
Attorneys for Defendants
VISAGE PRO USA, LLC and
SHERRIE BERRY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TRIGG LABORATORIES, INC.,)	Case No.: CV15-03994 MMM (ASx)
)	
Plaintiff,)	<i>Assigned for all discovery matters to the</i>
)	<i>Honorable Alka Sagar</i>
vs.)	
)	STIPULATION FOR PROTECTIVE
)	ORDER
VISAGE PRO USA, LLC, et al.,)	
Defendants,)	Complaint Filed: May 27, 2015
)	Proposed Pretrial Conf. Date: May 23, 2016
)	Proposed Trial Date: June 14, 2016
)	

GOOD CAUSE STATEMENT

Subject to the approval of the Court, all documents, material or information produced or created by a party or non-party (“Source”) to a party in this action (“Receiving Party”) containing information which the Source or a party believes in good faith to be confidential or trade secret information, shall be designated as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES ONLY by the Source or a party and maintained by the Receiving Party(ies) pursuant to the terms of this Order.

I. GOOD CAUSE STATEMENT

A. Factual Background

The parties to this case are in the business of manufacturing, marketing, and selling personal lubricants. Because of the parties’ status as competitors or potential competitors, business information such as product formulations, supplier lists, customer lists, cost-of-goods sold, pricing, manufacturing agreements, and other, similar information are confidential and must be protected from disclosure, and with highly sensitive information, safeguards are necessary to limit the disclosure of such information to opposing parties and/or other competitors in the market so as to avoid competitive harm.

The threshold issues in the complaint center on allegations of trademark infringement, false comparative advertisements and unfair competition. Resolution of these issues and damages analysis may require evidence of, but not limited to, product formulation, customer lists, cost of manufactures, supplier lists, sales data, and channels of trade.

B. The Proposed Protective Order Focuses on the Protection of Commercially Sensitive Business Information

Federal Rule Civil Procedure Rule 26(c)(7) permits the grant of a protective order upon a showing of good cause, and provides that the protection of a trade secret or other confidential commercial information is a proper basis for the issuance of a protective

1 order. The party seeking such an order must demonstrate a particular and specific need
2 for the protective order. *Gary v. Rodewald*, 133 F.R.D. 39, 40 (N.D. Cal. 1990).

3 A protective order that focuses on preventing disclosure of particular information,
4 e.g. confidential business information, where disclosure would “likely cause serious
5 harm,” is supported by good cause. *Hayden v. Siemens Medical Systems, Inc.*, 106
6 F.R.D. 551, 556, (S.D.N.Y. 1985). To support a showing of good cause, however, a
7 protective order must be sufficiently tailored in the information it seeks to protect, e.g. by
8 designating certain classes or types of information. *Id.*

9 A “blanket” protective order, as opposed to a broader “umbrella” protective order,
10 “permits the parties to protect the documents that they in good faith believe contain trade
11 secrets or other confidential commercial information. Such protective orders are
12 routinely agreed to by the parties and approved by the courts in commercial litigation,
13 especially in cases between direct competitors.” *Bayer AG and Miles Inc. v. Barr
14 Laboratories, Inc.*, 162 F.R.D. 456, 465, (S.D.N.Y. 1995).

15 As competitors, the parties’ proposed protective order was drafted to protect the
16 confidentiality and disclosure of each party’s confidential business information and to
17 provide extra precautions on the disclosure of highly sensitive business information, as
18 defined below, and as balanced against the need and use for such information to
19 prosecute and defend this action. Confidential information, whether designated
20 CONFIDENTIAL or CONFIDENTIAL ATTORNEYS’ EYES ONLY, is open to
21 challenge by any party, any third party, or the public.

22 **C. Conclusion**

23 Based on the foregoing demonstration of good cause in support of the [Proposed]
24 Protective Order, this Order should be granted by the Court to protect that parties’
25 confidential business information.

26
27 ///

28 ///

STIPULATION AND ORDER

In accordance with Rule 26(c) *Federal Rules of Civil Procedure* the parties stipulate and agree, through their respective counsel, to the entry of a protective order governing the disclosure during pretrial discovery and the subsequent handling of trade secret information, proprietary information, other confidential commercial, financial or personal information, and documents containing any such information as follows:

1. INITIAL DESIGNATION.

1.1 Confidential Information. In connection with discovery in this action, the parties may designate materials, including electronic files, documents, things, and testimony, as “CONFIDENTIAL” and/or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” (collectively hereinafter, “CONFIDENTIAL INFORMATION”) under the terms of this Stipulated Protective Order (“Order”). Confidential information is information that has not been made public and which concerns or relates to the processes, operations, type or work, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers and suppliers, inventories, blueprints, amount or source of any income, profits, losses, or expenditures of any persons, firm, partnership, corporation or other organization, the disclosure of which information may have the effect of causing harm to the competitive position of the person, firm, partnership, corporation or to the organization from which the information was obtained, and, to the extent not already encompassed in the preceding definition, trade secrets as defined in California Civil Code § 3426.1. By designating a document, thing, material, testimony or other information derived therefrom as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES ONLY under the terms of this Order, the party making the designation is certifying to the court that there is a good faith basis both in law and in fact for the designation within the meaning of Federal Rules of Civil Procedure 26(g). Material designated as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES ONLY under the Order, the information contained therein, and any documents derived in whole or in part from material designated as CONFIDENTIAL INFORMATION

1 (“CONFIDENTIAL MATERIAL”) shall only be used for the prosecution, defense or
2 settlement of this action, and for no other purpose.

3 **1.2 Produced Documents.** A party producing documents that it believes
4 constitute or contain CONFIDENTIAL INFORMATION shall produce copies bearing a
5 label designating such material CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’
6 EYES ONLY. As used herein, the term “documents” includes all writings or other media
7 on which information is recorded and other electronic files and tangible things subject to
8 production under the *Federal Rules of Civil Procedure*. Any and all documents,
9 information, or materials provided by a party for the purpose of settlement discussion
10 prior to the entry of this Order by the Court shall be deemed Confidential Information;
11 notwithstanding any other provisions of this Order, no such documents, information, or
12 materials may be disclosed, shared, or otherwise used during any part of this case unless
13 introduced again by the same providing party under this Order.

14 **1.3 Interrogatory Answers.** If a party answering an interrogatory believes in
15 good faith under the criteria set forth in Paragraph 1.1 above that its answer contains
16 CONFIDENTIAL INFORMATION, it shall set forth its answer in a separate document
17 that is produced and designated as CONFIDENTIAL or CONFIDENTIAL-
18 ATTORNEYS’ EYES ONLY in the same manner as a produced document under
19 subparagraph 1.2. The answers to interrogatories should make reference to the separately
20 produced document containing the answer, but such document should not be attached to
21 the interrogatories.

22 **1.4 Inspections of Documents.** In the event a party elects to produce files and
23 records for inspection and the requesting party elects to inspect them, no designation of
24 CONFIDENTIAL INFORMATION need be made in advance of the inspection. For
25 purposes of such inspection, all materials produced shall be considered as
26 CONFIDENTIAL INFORMATION unless the Parties agree otherwise. If the inspecting
27 party selects specified documents to be copied, such documents shall be treated as
28 CONFIDENTIAL INFORMATION until 10 days have elapsed from the time the

1 producing party is provided copies of the selected documents, during which time the
2 producing party may designate such documents as CONFIDENTIAL MATERIAL in
3 accordance with subparagraph 1.2.

4 **1.5 Deposition Transcripts.** Portions of testimony taken at a deposition or
5 conference and any corresponding exhibits may be designated as CONFIDENTIAL or
6 CONFIDENTIAL-ATTORNEYS' EYES ONLY by making a statement to that effect on
7 the record at the deposition or other proceeding. Arrangements shall be made with the
8 court reporter transcribing such proceeding to separately bind such portions of the
9 transcript containing information designated as CONFIDENTIAL or CONFIDENTIAL-
10 ATTORNEYS' EYES ONLY and label such portions appropriately.

11 **1.6 Multi-page Documents.** A party may designate all pages of an integrated,
12 multi-page document, including a deposition transcript, interrogatory answers and
13 responses to document requests, as CONFIDENTIAL INFORMATION by placing the
14 label specified in subparagraph 1.2 on the first page of the document. If a party wishes to
15 designate only certain portions of an integrated, multi-page document as
16 CONFIDENTIAL INFORMATION, it should designate such portions immediately
17 below the label on the first page of the document and place the label specified in
18 subparagraph 1.2 on each page of the document containing CONFIDENTIAL
19 INFORMATION.

20 **1.7 List.** Within fourteen days after producing or designating CONFIDENTIAL
21 INFORMATION, the producing or designating party shall provide a log identifying all
22 such designated material. The log shall identify the documents or other material either by
23 Bates stamp number(s) or by a description sufficiently detailed to make the document or
24 material the basis for the claimed CONFIDENTIAL or CONFIDENTIAL-
25 ATTORNEYS' EYES ONLY designation..

26 **1.8 Attorneys' Eyes Only Material.** As stated above, the parties may designate
27 discovery material or testimony of a highly confidential and/or proprietary nature as
28 ATTORNEYS' EYES ONLY or CONFIDENTIAL-ATTORNEYS' EYES ONLY

(“Attorneys’ Eyes Only Material”), in the manner described in paragraph 1 above. Attorneys’ Eyes Only Material, and the information contained therein, may be disclosed only to the following: (i) the Court, pursuant to paragraph 3.5 hereof; (ii) mediators or arbitrators agreed upon by the parties; (iii) outside counsel for any party (and their staff); or (iv) other “qualified persons” listed in subparagraphs 3.1(b) through (h) herein. Individuals within categories (iii) to (iv) shall pre-agree to be bound by the terms of the Protective Order. Attorneys’ Eyes Only Material shall not be disclosed to any party or to any officer, in-house counsel, director or employee of any party unless agreed in writing by the parties or ordered by the Court. ATTORNEYS’ EYES ONLY and CONFIDENTIAL information shall collectively be referred to as Designated Material.

1.9 Later Designations. A party may also designate information disclosed at a deposition as CONFIDENTIAL and/or ATTORNEYS’ EYES ONLY by notifying all parties in writing, within twenty-one (21) days of receipt of the transcript, of the specific pages and lines designated as such. Each party shall attach a copy of such written statement to the face of each transcript in its possession, custody or control. For twenty-one (21) days after receipt of the transcript, depositions shall be treated as ATTORNEYS’ EYES ONLY, but after that period any portions not designated as CONFIDENTIAL and/or ATTORNEYS’ EYES ONLY may be disclosed.

2. DESIGNATIONS BY ANOTHER PARTY. For fourteen (14) days after receipt of documents from a third party, the documents shall be treated as ATTORNEYS’ EYES ONLY, but after that period any portions not designated as CONFIDENTIAL and/or ATTORNEYS’ EYES ONLY may be disclosed. If a third party produces documents that any party reasonably believes should be protected under this Order, within fourteen (14) days of the production said party to this action shall advise all counsel of its designation of such documents as CONFIDENTIAL and/or ATTORNEYS’ EYES ONLY and shall affix the corresponding stamp on such documents. The third party may itself designate documents or testimony as Confidential or Attorneys’ Eyes

1 Only as provided herein. All parties shall cooperate to effectuate affixing the necessary
2 stamp.

3 **3. HANDLING PRIOR TO TRIAL.**

4 **3.1 Authorized Disclosures.** Discovery Material designated as
5 CONFIDENTIAL or information derived therefrom may be disclosed, shown, or made
6 available, or communicated in any way only to the following persons:

7 a. The parties and employees of the parties, but only to the extent necessary to
8 participate in, assist in and monitor the progress of this action and for no other purpose;

9 b. Qualified persons taking testimony involving Designated Material, and
10 necessary stenographic, videographic, and clerical personnel thereof;

11 c. Consultants or experts and their staff who are employed for the purposes of
12 this litigation, provided that the provisions of Paragraph 3.3 of this Stipulation are
13 complied with prior to any disclosure of any Designated Material to such an expert or
14 consultant;

15 d. The Court and the Court's staff pursuant to Paragraph 3.5 of this Stipulation;

16 e. Attorneys for the parties to this litigation and/or the insurance carriers for the
17 parties to the litigation, including persons working solely in secretarial, clerical, and
18 paralegal capacities, and who are providing assistance to counsel in this action, and/or
19 claims representatives and/or claims adjusters, upon the condition that such Designated
20 Documents not be used in policy issuance determinations and be immediately destroyed
21 by the insurance carriers upon completion of the instant litigation;

22 f. Third-parties specifically retained to assist outside counsel in copying,
23 imaging, and/or coding of documents but for that purpose only, provided that all such
24 confidential documents are kept and maintained in a separate and secure place and that
25 the third party retained to copy, image, or code confidential documents is not currently
26 performing any services, either as an employee, consultant, or otherwise for any
27 competitor of either party to this action or for one having any interest adverse to either
28 party to this action;

g. The author, addressees and recipients of the documents or any person who would have had access to such information by virtue of his /her employment; and,

h. Any other person as to whom the parties previously agree in writing.

Such disclosures are authorized only to the extent necessary to prosecute or defend this litigation. There will be no disclosure of CONFIDENTIAL INFORMATION to any person or entity who is a manufacturer or retail competitor (or an employee of a manufacturer or retail competitor) of a party. There will be no disclosure of CONFIDENTIAL INFORMATION to any distributor or supplier (or an employees of a distributor or supplier) of a party unless within 14 days of written notice by the party wishing disclosure, either the parties agree to the terms of disclosure or the party objecting to a proposed disclosure files a motion objecting to disclosure and the court orders otherwise.

3.2 AEO Disclosure. Material or documents designated as ATTORNEYS' EYES ONLY may be shown to a "qualified person" listed in subparagraphs 3.1(b) through (h).

3.3 Procedure. Except for persons described in Paragraph 3.1.d, 3.1.e or 3.1.f of this Stipulation, all persons to whom Designated Material is disclosed or by whom Designated Material is used, including parties, non-parties, and their representatives, shall be informed of and agree to be bound by the terms of this Stipulation and the Protective Order and shall take all necessary precautions to prevent any disclosure or use of Designated Material other than as authorized by this Stipulation.

a. Prior to disclosing Designated Material to any person, other than persons described in Paragraph 3.1.d, 3.1.e or 3.1.f of this Stipulation, the disclosing party shall obtain from such person a "Written Assurance" acknowledgement (Attachment "A"), that such person has reviewed a copy of this Stipulation and any subsequent Protective Order issued by the Court, will comply with their terms in all respects, and will submit to the jurisdiction of this Court for adjudication of any dispute about whether such person has complied with the terms of this Stipulation and any subsequent Protective Order issued

1 by the Court. In addition, prior to dissemination by a receiving party, or its counsel of
2 record, of any Designated Material to any person, other than persons described in
3 Paragraph 3.1.d, 3.1.e or 3.1.f of this Stipulation, the disseminating party shall obtain and
4 maintain a copy of this acknowledgement evidencing that such person has executed the
5 undertaking.

6 b. Individuals who are authorized to review Designated Material pursuant to
7 this Stipulation shall hold the Designated Material and its contents in confidence and
8 shall not divulge the Designated Material or its contents, either verbally or in writing,
9 except as expressly permitted by this Stipulation, unless authorized to do so by a further
10 Order of this Court or as specifically required by law.

11 **3.4 Unauthorized Disclosures.** In the event of disclosure of material
12 designated as CONFIDENTIAL and/or ATTORNEYS' EYES ONLY Material, other
13 than as authorized in this Order, counsel for the party responsible for the disclosure shall
14 notify all parties of all pertinent facts, and shall make every effort to prevent further
15 disclosure, including retrieving disclosed materials and copies of such materials and
16 having unauthorized persons to whom disclosure was made sign a "Written Assurance"
17 acknowledgement (Attachment "A"). Upon written stipulation, in accordance with Local
18 Rule 37, the Court may order such further and additional relief as it deems necessary and
19 just.

20 **3.5 Court Filings.** Any Confidential Material (or documents containing
21 Confidential Material) to be filed with the Court shall be filed under seal pursuant to the
22 procedures set forth in Local Rule 79-5.1, or pursuant to such other procedures for filing
23 under seal as the Court may order or allow. The parties agree that exhibits provided to
24 any jury empanelled in this proceeding shall be provided without the CONFIDENTIAL
25 or ATTORNEYS' EYES ONLY stamp.

26 **4. HANDLING DURING TRIAL.** CONFIDENTIAL INFORMATION
27 and/or ATTORNEYS' EYES ONLY which is subject to this order may be marked and
28

1 used as trial exhibits by either party, subject to terms and conditions as imposed by the
2 trial court upon application by the designating party.

3 **5. HANDLING AFTER TRIAL.** This Order shall survive the final
4 termination of this action and shall protect all retained materials that have remained
5 confidential through final termination of the case. Upon final termination of this case,
6 counsel for the parties may each retain one copy of the pleadings, transcripts of any
7 hearings or trials, transcripts of depositions, and exhibits from any hearings, trials or
8 depositions. Counsel shall destroy or assemble and return to each other materials
9 designated as confidential and all copies or summaries thereof.

10 **6. RESTRICTIONS.** Nothing herein shall impose any restriction on the use
11 or disclosure by a party of material: (1) obtained lawfully by a party hereto other than
12 through discovery in this action, from a person who, to the best of such party's
13 knowledge, was not at the time such materials were obtained by such party under a duty
14 (contractual or otherwise) to maintain such materials in confidence; (2) that is public
15 knowledge or became public knowledge after disclosure under this Order (other than
16 through an act or omission or a person receiving material under this Order).

17 **7. OTHER REQUESTS.** The Order shall be without prejudice to the right of
18 any party: (i) to request re-designation of material as Confidential, Attorneys' Eyes Only,
19 or neither, or both; (ii) upon written stipulation, in accordance with Local Rule 37, to
20 request the Court's ruling on whether a document or information is Confidential or
21 Attorneys' Eyes Only Material, or whether its use should be restricted; (iii) to present a
22 motion to the Court under FRCP 26(c) for a separate protective order as to any document
23 or information, including restrictions differing from those specified herein. The Order
24 shall not be deemed to prejudice the parties in any way in any future application for
25 modification of this Order.

26 **8. CUSTODY.** Recipients of material under this Order shall maintain such
27 material secured and shall exercise the same standard of care with respect to storage,
28

1 custody, use and dissemination of the material as they exercise for their own proprietary
2 information, but in no event shall the standard be less than that of a reasonable person.

3 This order shall be binding on the parties when signed regardless of whether and
4 when this Court endorses this Order.

5
6 IT IS SO STIPULATED.

7
8 Dated: November 10, 2015

MILORD & ASSOCIATES, P.C.
TRYGSTAD, SCHWAB & TRYGSTAD
/s/ Milord A. Keshishian
Milord A. Keshishian
Daniel J. Kolodziej
Attorneys for Plaintiff
TRIGG LABORATORIES, INC.

9
10
11
12
13
14 Dated: November 10, 2015

COAST LAW GROUP, LLC
/s/ Chris Polychron
Gary Sirota
Chris Polychron
Attorneys for Defendants
VISAGE PRO USA, LLC and
SHERRIE BERRY

15
16
17
18
19
20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21
22 DATED: November 10, 2015

23
24
25 / s / Alka Sagar
Honorable Alka Sagar
United States Magistrate Judge
26
27
28

MILORD & ASSOCIATES, PC
2049 Century Park East, Suite 3850
Los Angeles, CA 90067
(310) 226-7878

Attestation Pursuant to L.R. 5-4.3.4(a)(2)(i)

I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: November 10, 2015 /s/ Milord A. Keshishian
Milord A. Keshishian

MILORD & ASSOCIATES, PC
2049 Century Park East, Suite 3850
Los Angeles, CA 90067
(310) 226-7878

EXHIBIT A
WRITTEN ASSURANCE

I, _____ (print name), reside
at _____, in the City of _____,
_____. I am employed by and/or affiliated with _____, with a
business address of _____, in the City of
_____, _____. I have read and understand the Stipulated Protective
Order filed in the case of *Trigg Laboratories, Inc. v. Visage Pro USA, LLC, et al.*, United
States District Court Case CV 15-03994 MMM (ASx). I agree to comply with and be
bound by the provisions of the Stipulated Protective Order. I will not divulge
Confidential Material and/or Attorneys' Eyes Only Material (as those terms are defined
in the Stipulated Protective Order) to persons other than those specifically authorized by
the Stipulated Protective Order. I will not copy or use, except solely for the purpose of
this litigation, any information protected by the Stipulated Protective Order except as
expressly permitted by the Court.

Executed at _____, _____ (insert city and state),
this ____ day of _____, 201__.

Signature